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## Book Reviews

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## BOOK REVIEWS

**PRESIDENTIAL SUCCESSION.** Ruth C. Silva. Ann Arbor, Michigan: University of Michigan Press (University of Michigan Studies, History and Political Science Series, Vol. XVIII), 1951. Pp. viii, 213.

Was John Tyler the President of the United States from 1841 to 1845 following the death of William Henry Harrison? Who would have succeeded Andrew Johnson, in the office of Chief Executive, if he had been successfully impeached? Would that person have been President of the United States or merely one exercising the powers of that high office? If the latter, for how long would he have acted? What would have occurred if Chester A. Arthur had assumed the office of President during the disability of James A. Garfield, or if Thomas R. Marshall had done likewise during the second Wilson administration, and either Garfield or Wilson had been restored to full health? Would the country have possessed two presidents; would Arthur or Marshall have been obliged to step down; or would Garfield or Wilson have ceased to hold the office given them by popular vote? Is the present congressional act relating to presidential succession constitutional? It is sound, if constitutional; does it cover all possible problems?

These are but a few of the matters discussed in this excellently documented study by a member of the Political Science Department of Pennsylvania State College, one which gives detailed analysis to an ambiguous, if not obscure, section of the United States Constitution and to the legislative attempts which have been made, from time to time, to implement it to offset the potential disaster which could flow from a break in the exercise of the executive power. Some answers, here noted, may have been provided by what might be said to be a body of constitutional custom and usage. Others may be worked out, at least in principle, from reference to the writings and oral comments of the founding fathers, whose records have been intensively combed by the author for light on the subject. The balance of these questions remain to be resolved. Law makers and constitutional framers will find ammunition here at hand from which to work out solutions, for all the issues are noted and logical answers have been proposed. In the process, some analogies have been drawn to issues which could arise at the state level, but the prime emphasis is on the office of the Chief Executive of the nation and those who may succeed to it.

THE ECONOMICS OF THE INTERNATIONAL PATENT SYSTEM. Edith Tilton Penrose. Baltimore: The Johns Hopkins Press, 1951. Pp. xv, 247.

Lawyers, even those not actively engaged in the field of patent law, are not unfamiliar with the changes which have been brought about in recent years in what had, at one time, been regarded as the American ideal for the reward of discoverers and inventors.<sup>1</sup> The attack, of course, has not always been from the Marxist standpoint, but it has, too frequently, come from uninformed areas wherein special interests have predominated.

This book, part of a larger study of the economics of the patent system, views the entire problem of the patent system from the standpoint of the economist. As little has been written in recent years from that viewpoint, a large segment of the book is taken up with an historical introduction reviewing the development of patent systems in the several countries where they exist and of the creation of international conventions for the protection of industrial property. Necessarily, in that process, it has been obligatory to review the several theories offered in justification of any sort of patent right and the several methods devised to prevent monopolization arising therefrom. To that point, the book offers invaluable background for an appreciation of the several patent systems.

The controversial areas are entered when the author begins to weigh the economic factors, to balance the costs and gains, accruing from the granting to an inventor of a protection in the fruits of his achievement. Whatever the economic facts may be within any given country, it is the author's belief that, at the international level, the social cost of extending patent protection exceeds the gains to be derived from it. While some of these costs may be reduced by compelling the patentee to work, or forcing him to license others to work, his invention in other areas, there is no doubt that the wide diversity of technological and industrial development throughout the world prevents a full utilization of this idea. The net result, therefore, is that parts of the world must suffer for the benefit of a few protected areas. That suffering, the author indicates should be brought to an end, and will be ended when the complete economic account has been written. That message is driven home without recourse to political arguments, of whatever stripe, and on the basis of cold, well-organized facts.

<sup>1</sup> See, for example, Lutz, "A Proper Public Policy on Patents: Are We Adopting the Soviet View?" 37 A. B. A. J. 905 (1951).

AND CROWN THY GOOD. Philip Davis. New York: The Philosophical Library, 1951. Pp. ix, 239.

Autobiographical tales of the successful lives of penniless immigrants too frequently follow the Horatio Alger formula, hence provide little more than commentary on the fact that the United States has been a land of opportunity for those who have been energetic or forceful enough to take advantage thereof. After omitting the personal variations on that theme, there would be little occasion to talk about this book if it were not for the fact that it provides local color in the Chicago area, by reason of the author's association with the revered Jane Addams of Hull House, and for its account of the growth of the trade union movement, particularly in New York, Philadelphia and Boston, where the author served as an organizer and counsellor. Woven into the tale is a story of social service revealed in the promotion of settlement houses and institutes for the relief and education of the working masses of the east. Here, then, is the story of a life spent not in amassing wealth but in an effort to carry out the thought of Katharine Lee Bates, expressed in a verse from her poem "America the Beautiful," to "crown thy good with brotherhood from sea to shining sea!" While not a law book, it has a message for every lawyer who may have given more than a passing thought for the under-privileged and the under-paid.

PRISONERS AT THE BAR. Francis X. Busch. Indianapolis, Indiana: The Bobbs-Merrill Company, Inc., 1952. Pp. ix, 288.

GUILTY OR NOT GUILTY? Francis X. Busch. Indianapolis, Indiana: The Bobbs-Merrill Company, Inc., 1952. Pp. ix, 287.

It can only be supposed that, in the course of preparing his earlier book on law and tactics in the trial of jury cases,<sup>1</sup> Mr. Busch had occasion to give consideration to many of the outstanding or noteworthy civil and criminal trials to be found in the realm of Anglo-American jurisprudence. In the preparation of that scholarly work, he no doubt found interest, even enjoyment, in pursuing the details of those cases but doubtless recognized that legal records might make dull reading to all except a skilful trial attorney such as himself.<sup>2</sup> Through these companion volumes, he now

<sup>1</sup> See the review of Busch, *Law and Tactics in Jury Trials: The Art of Jury Persuasion*, Bobbs-Merrill Company, Inc., 1949, appearing in 27 CHICAGO-KENT LAW REVIEW 260.

<sup>2</sup> The author, an Illinois lawyer for more than fifty years, gained trial experience as attorney for several county offices, as corporation counsel for the City of Chicago, and in private practice in Chicago. He has, during his busy career, also been dean, now dean emeritus, of DePaul University College of Law.

offers the public an intimate and highly readable account of eight notable American criminal trials occurring in the twentieth century. Each trial is reported, with careful but unbiased editing and supplementation, so that the reader is furnished with the details relating to the crime, the steps pursued in the investigation thereof, the conduct of the trial, sometimes in synthesis but sometimes in direct quotation from the record with excerpts from the closing arguments, as well as the verdict and judgment attained and the post-trial history, where such exists. In so doing, Mr. Busch has made each account so realistic in character that the reader is made to feel as if he were a "thirteenth juror" in attendance at the hearing.

Few will fail to remember the newspaper furor over cases like the trial of Leopold and Loeb for the murder of Bobbie Franks, of Bruno Hauptmann for the kidnapping murder of the Lindbergh baby, of D. C. Stephenson for the Indiana rape-murder of Madge Oberholtzer, or of Alger Hiss for perjury. The details of other cases, such as the prosecution of Samuel Insull for alleged mail frauds in the formation of his ill-fated utility empire, or of Sacco and Vanzetti for the hold-up killing of the payroll guards, have begun to dissolve into the past. The two remaining trials here considered, those of "Big Bill" Haywood for the dynamite-murder of the ex-governor of Idaho, and of Leo Frank for the murder of his shop-girl employee, may serve to reveal what are, to some, unknown chapters in American criminal law.

The helpful comments of the author as to the conduct of each of these trials should be reason enough to make the student of trial tactics anxious to give close attention to the unfolding narrative. The gripping nature of each account should draw the interest of even the most casual reader, for every criminal trial has within it the seeds of powerful human drama. It takes the skill of an accomplished author, however, to recreate the dramatic effect for the benefit of those who are unable to be firsthand observers. Mr. Busch has demonstrated that he possesses that ability to a high degree, for these are two books of sterling quality.

**ESTATE TAX HANDBOOK.** Edited by J. K. Lasser. Albany, New York: Matthew Bender & Company, 1951. Pp. v, 846.

**BUSINESS INTERESTS: Contractual Disposition Effective at Death.** Edited by Solomon Huber. Mount Vernon, New York: Farnsworth Publishing Company, 1952. Pp. 64 (Paper).

The difficulty inherent in the efficient use of the symposium as a means of conveying information regarding a particular topic or area of law lies in the expense of bringing a suitable panel of experts to one point where they may address a sufficient number of interested listeners

who can afford to take the time and make the journey necessary to be at that same place. Even then, the ear is apt to receive a less permanent impression than that conveyed by the eye, hence the spoken discussions are likely to be lacking in the value which may be gleaned from a perusal of the printed word. Preparation of a printed transcript of the proceedings tends to bridge that gap, but any lawyer who has examined such a transcript can vouch for the fact that few persons speak fluently and to the point. Many of these objections may be obviated if the wisdom of the experts on the panel is prepared in formal fashion and presented in print. Then, each reader may sample at his pleasure and re-read for understanding if the first contact fails to accomplish its purpose.

The two works under consideration are of that character, although the first represents a much more thorough and diversified treatment of the hundreds of rules and principles regarding estate planning which have become crystallized in the past few years. In it appears the "know how," the methodology, and the successfully tested formulas of some twenty-two top-flight advisers scattered around the country. The contents range from sound but general advice on trust planning, through detailed forms of powers of appointment to meet certain tax contingencies, to problems as diverse as valuation on the one hand and the tax consequences of divorce and separation on the other. There is much cogent advice on the subject of the preparation of estate tax returns, and plenty of lucid, non-technical illustrations of the varied tax-saving devices. If weakness appears at all, it lies in the fact that certain of the discussions are localized in character, being particularly oriented toward New York law, while other sections, such as the one dealing with the use of the personal foundation, are not entirely adequate in their coverage. The second publication is, by contrast, quite limited in scope, being principally concerned with the use of "buy-out" and similar agreements and the tax problems attendant thereon.

Naturally, with different men working on aspects of a common subject, there is a tendency toward disjointedness as well as some obvious duplication of effort and advice. Careful editing would have produced a reduction of content without loss. More careful typographical spacing would have resulted in fewer pages. Aside from these things, however, the works in question afford the practitioner more for his money, social considerations left aside, than he could have obtained by attendance at a dozen symposia.

**TAXATION AND THE AMERICAN ECONOMY: An Economic, Legal, and Administrative Analysis.** William H. Anderson. New York: Prentice-Hall, Inc., 1951. Pp. xxi, 598.

Technical works on taxation, whether limited to income taxation or of more general scope, too frequently treat with the subject from the standpoint of an assumption that the reader will be familiar with the economic, social, and political factors involved. They, therefore, usually concentrate on the legal aspects of the tax device, the impact thereof on the taxpayer or the property subject to taxation, and the difficulties inherent in tax administration or collection. In many instances the assumption is a valid one, but no full understanding of tax law is possible without some appreciation of these other factors and they are often lost to sight under pressure of the necessity of applying tax law to the preparation and filing of tax returns or to the resistance of tax assessments and the like. The publication of Professor Anderson's book should operate to relieve the student of taxation, and the busy lawyer, against the possibility of oversight in some areas of taxation where knowledge is important to provide background for the evaluation, and correct application, of tax laws.

In his textbook, written at the collegiate level, the author, experienced in both law and economics, has presented a thorough analysis of the several schemes of taxation presently in vogue, both state and federal, extending over general property taxes, income taxation, the taxation of gifts and inheritances, business taxes, consumption and use taxes, even down to poll taxes, with an explanation of the economic bases, the legal problems, and the administrative difficulties appertaining to each. Details relating to tax shifting, tax avoidance, and tax evasion are not omitted. Where profitable, tables, graphs, even cartoons, help out the text. Theories of taxation and the justification thereof are explored and evaluated while the mechanics of tax practices are opened up to investigation. The product represents one of the most clarifying and readable accounts concerning taxation that has appeared to date. It should be made the basis of the student's introduction to tax law.

**THE COOPERATIVE MOVEMENT AND SOME OF ITS PROBLEMS.** Paul Hubert Casselman. New York: The Philosophical Library, 1952. Pp. xii, 178.

Lawyers may, from time to time, be called on to advise or to assist in the formation of cooperative enterprises. If so, they may find passing interest in this slender volume as it sketches something of the history of the cooperative development, treats briefly with the relation of the cooperative to labor, discusses its economic background, and dabbles with the

question of its taxation. Obviously written by one with more than a passing interest in the cooperative movement, the book tends in the direction of a tract rather than toward that dispassionate and detailed type of analysis one would expect to receive from the pen of an economics professor. It is, therefore, not something to be recommended, but the bibliographical listings found therein may prove to possess utility.

**STATES' LAWS ON RACE AND COLOR.** Compiled and edited by Pauli Murray. Cincinnati, Ohio: Woman's Division of Christian Service, The Methodist Church, 1951. Pp. x, 746.

A person concerned with civil rights, particularly as those matters bear on segregation and discrimination, should be armed with information concerning the extent of state legislation both in favor of or in opposition to the general topic. Heretofore, such a person would have been obliged to devote hours of labor picking through the contents of a seemingly endless number of state constitutions and statute books to find appropriate references. Thanks to the effort of the compiler and the financial assistance afforded by the publishing group, it is now possible to scan all such statutes within the covers of one book.

The law of each state is treated separately, arranged according to convenient rubrics such as education, employment, miscegenation, or transportation, to mention only a few of the topics listed, but it is possible, through an introductory note, to secure a nation-wide view of the subject. In addition, appropriate reference has been made to judicial interpretation, application or rejection of the statutes in question. Several valuable appendices and charts extend the scope of the material to governmental levels as separate and apart as the United Nations on the one hand and municipal councils on the other. Developments relating to discriminatory practices have been made the subject of comment, and several significant briefs and judicial opinions have been reproduced. Not being limited simply to the problems of Negroes, the work provides an excellent summary of all laws, discriminatory or otherwise, operating in the entire field of human relations. It furnishes a systematized basis for comparison with any universal declaration as to human rights.

**LET JUSTICE BE DONE.** James Morfit Mullen. Philadelphia: Dorrance & Company, Inc., 1952. Pp. vii, 371.

When a practicing lawyer, particularly one whose lifetime of activity has been devoted to what is euphemistically referred to as "general" practice, sits down to write about law, he is apt to see his subject more nearly in terms of a series of personal experiences than as a comprehensive



system for the administration of justice. It would, therefore, be practically impossible for him to write anything more than a pattern of biographical anecdotes no matter how much he might strive to give them a schematic rather than a chronological arrangement. This book, written by a Maryland lawyer, displays just that type of treatment despite the author's attempt to make it into a simple account of law and the administration thereof in a style likely to prove of interest to laymen as well as to other lawyers.

There is, in the process of so writing, much that is repetitious, much that is trivial, and not a little that is the product of half-learned or half-forgotten knowledge. A legal scholar would probably be shocked at the "horse" Latin, the apparent acceptance of ancient rumor, the uncritical reiteration of long-since rejected concepts and institutions, and at the overall picture that has been drawn. Some might find it humorous to discover that Robert Louis Stevenson, for example, has been claimed as a "celebrated American writer." Others might be pleased to know that the author has listened to speeches, some by eminent men, whose words were heard but have since been forgotten. People of that type could have a "field" day with this book. Others might be inclined to check the book off as containing some not unpleasant, in fact occasionally interesting, thoughts of one who felt, and followed, the urge to write whatever came to mind without regard to the relevance thereof. One thing is certain, the heavens will not fall even if justice has not been done to the book in question.

CRIME AND CORRECTION: Selected Papers. Sheldon Glueck. Cambridge, Massachusetts: Addison-Wesley Press, Inc., 1952. Pp. x, 273.

Professor Glueck's views on the subject of crime and the criminal offender are too well-known to call for much comment. He has long been an advanced worker for reform in the administration of criminal justice, especially in areas dealing with fundamental causes of criminal conduct, with the application of psychiatry to the examination and treatment of offenders, with the establishment of rational systems for parole and probation, and with the need to develop adequate social devices to prevent crime. Except as some of these topics have received treatment in book form, much of the author's writing has appeared in legal journals or in the proceedings of learned societies. From among these scattered sources, the author has made a selection of the most vital of his papers, dealing with issues yet generally unsolved, and has compiled them in this book. In that way, it has been made possible to survey the entire realm of the administration of criminal law, to focus upon its defects, to recount the reforms which have been urged before, to discuss the piecemeal efforts at reform, and to emphasize what remains to be done.

In the process, much has been said of the importance of developing an adequate body of trained persons in the related fields of biology, psychology, sociology, and penology, to assist the judge in achieving a thorough picture of the offender, his background, his mental and physical traits, and the like, in order that a true understanding of crime and of its correction may be attained. Few would debate the validity of the argument that the proper administration of a system of criminal law is not simply one calling for standardized treatment for all violators, but involves much individualized study and supervision in order that an indicated therapy may be carried out. There is some occasion to question, at least under a constitutional system of government as presently practiced, whether it would be possible to separate the guilt-determining function from the sentencing one,<sup>1</sup> as urged by the author, in order that specially trained personnel might furnish their unique skills toward a more successful outcome of the criminal case. There is no doubt, however, that much which the author has written is possible of formulation into law and should be developed in order that society be made able to cope with the problem of crime and its correction in a more intelligent fashion than is presently the case.

As the effect of crime is not localized, but may be international in scope, there should be no occasion for criticism over the fact that the author has included among these papers one written to analyze, and vindicate, the legal basis for the Nuernberg trials. Certainly, the supporting data goes a long way to show that the argument over the alleged *ex post facto* treatment given the Nazi leaders lacked soundness. One is led to remark, however, over the seeming vindictiveness which underlies the discussion. That fact might not have been too apparent when the paper appeared by itself. It does, now, stand out in sharp contrast to the tone expressed throughout the rest of the work. For the author's sake, the concluding article could well have been omitted.

SUCCESSFUL TRIAL TACTICS. A. S. Cutler. New York: Prentice-Hall, Inc., 1949. Pp. ix, 317.

The reissue of a well-received publication seldom calls for comment as it is obvious, from the fact of reissue, that the author has done a good job in filling a need. There is occasion, however, in this instance, to remind the prospective reader that this work is still available for the group to which it is primarily addressed, those recently admitted or about to be admitted to the bar, may be unfamiliar with its existence yet are most in

<sup>1</sup> As to the right of an accused person to have the same judge act throughout the case, from trial to sentence, see *Freeman v. United States*, 227 F. 732 (1915), *Durden v. People*, 192 Ill. 493, 61 N. E. 317, 55 L. R. A. 240 (1901), and *Commonwealth v. Clancy*, 113 Pa. Super. 439, 173 A. 840 (1934).

need of the information contained within its covers. No matter how excellent the degree of academic training received, facility in the handling of the trial of cases is something acquired by the student principally as the result of experience and of close attention to the actual court-room scene. Theoretical preparation requires concrete application to develop a good trial lawyer, but it is still possible to learn, from the experience of others, some of the things that the young lawyer will be expected to face so that, armed in advance, he may be prepared for most eventualities. The author, from the treasure of a thirty-year career in the court-room, has here indicated many of the hard-earned lessons he has had to face and the solutions, not always developed on the spot, he has devised for the problems which beset the advocate. In some sixty-odd short chapters he has covered every phase of trial strategy and tactics from the grass-root standpoint, not in abstract textual fashion but with a generous seasoning of anecdotes and advice which make the book all the more readable. Except as it is addressed to practice in New York, not always comparable with practice elsewhere, it should be extremely useful to the young lawyer. He would, without doubt, profit from an examination of the contents.

POLICE ORGANIZATION AND MANAGEMENT. V. A. Leonard, Brooklyn, New York: The Foundation Press, Inc., 1951. Pp. xviii, 507.

Lawyers and civic groups concerned with the mounting rate of crime, as well as police executives, will find this volume a useful guide to the achievement of high standards of police department performance. That a nineteenth-century police organization cannot be brought up to date by the mere acquisition of radios and automobiles must be recognized. Organizational revamping, with a view to producing forces capable of striking the twentieth-century criminal at the scene of the crime or shortly thereafter, must be achieved so as thereby to exploit to the fullest the special services of detective, traffic, and records divisions. Achievement of this "line power" by effective organization of the police department is the goal toward which the author seeks to lead his professional readers. Many years of study and of experience with police department methods form the basis for Dr. Leonard's presentation of the principles of police department organization, and for his comments thereon.<sup>1</sup>

Unity of command, with undivided responsibility in the police executive to those elected officials under whom he serves, and by them to the voters, will at once enable formation of a coherent military operation

<sup>1</sup> The author is chairman, Department of Police Science and Administration, State College of Washington, Pullman, Washington.

against crime, and fix responsibility for failure in suppressing it.<sup>2</sup> Among other problems dealt with are those relating to the selection of an executive with a proper background in administrative as well as in police or military work, the lengthening of the police executive's tenure of office,<sup>3</sup> the distinction between "line" and "staff" components of the organization, and the matter of personnel selection and the tests which may be used to that end.

Of particular importance to efficient police work would be the use of modern machine records, with their cross-reference and tabulation systems. The immensity of the job of *manually* searching burglary records for a decade prior to a given date, for example, would prohibit use of the analytic approach to most cases in large cities. Indicative of what may be done, the author cites an illustrative case where the use of machines permitted an extensive analysis to be made promptly. In that case, Los Angeles police officers were baffled because they had no description of the burglar they sought, although they knew his *modus operandi*. Following twenty-eight burglaries extending over a three-month period, the case was finally turned over to the statistician who promptly solved it with the machine record system. By the mechanical sorting out of all earlier burglary cases, the complete description of the offender was discovered and he was then easily apprehended. The author concludes, at page 220, that crime "in all of its categories can be attacked successfully only upon the basis of painstaking records analysis. Personnel problems, organizational changes, budget requests, design of a new headquarters building, distribution of the force by function, time, and area, are representative of an almost endless succession of problem situations which require analytical attention if they are to be met effectively."

The day-to-day organizational work of allotting supporting or staff services to line units, the planning of strategy in the application of line forces to the varied emergencies which may arise, are also treated. Using the record system as a basis for forecasting peak loads upon patrols at various times and areas, the police executive is able to deploy his men most effectively.

<sup>2</sup> The author states, at p. 294, that the "policy determining body in local government is the City Council, and the police have no alternative but to function in accordance with policies laid down by this group of elected officials. If prostitution and gambling are rampant in a city, responsible citizens are entitled to the reasonable assumption that members of the City Council have adopted general policies which permit these conditions. Surely, no one is stupid enough to believe that a City Council would tolerate a police administration which failed to carry its policies into execution."

<sup>3</sup> Quoting from R. Weldon Cooper, *Municipal Police Administration in Texas* (Bureau of Municipal Research, University of Texas, 1938), p. 94, the author notes that the "short tenure of the American chief of police is disastrous; it averages 2.8 years in cities of 100,000 population and over."

Chapter Ten, on "Measurement," one of the more valuable inclusions in the text, seeks to enable the police executive to find the answer to the basic problem of the extent to which his department measures up to the accepted professional standards of modern police science. Pointing out that the volume of crime alone does not afford a basis for judging police efficiency,<sup>4</sup> the author sets out criteria by which to measure this efficiency,<sup>5</sup> together with a suggested check list and rating scale for each item on the list.

By presenting the principles involved in straightforward manner, and by relegating much detail, except that which is useful for illustration, to appendices, the author has given his work a clearly visible outline. The readable text is well adapted for use in police schools. The index and the accompanying bibliography render the volume a useful reference work for the student of political science, the lawyer, and the civic group, as well as the police executive.

<sup>4</sup> The Committee on Uniform Crime Records, International Association of Chiefs of Police (Uniform Crime Reporting Manual, Washington, 1930), § 4, p. 4, cited by the author on p. 352, reached the same conclusion.

<sup>5</sup> At p. 359, the author lists (1) internal organization, (2) organization for line power, (3) personnel selection and training, (4) police record controls, (5) patrol system, (6) detective administration, (7) vice control, (8) traffic administration, (9) crime prevention operations, and (10) self analysis.